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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

HIDDEN GLEN PARTNERS, LLC, Plaintiff and Appellant, v. CITY OF NAPA, Defendant and Respondent.	A143542, A144537 (Napa County Super. Ct. No. 26-55542)

The City of Napa (City) repeatedly assured residential developer Hidden Glen Partners, LLC (Hidden Glen or HGP) it would build a neighborhood park on property that was once a landfill. More than 10 years later, there is no park. There is, instead, a morass of litigation which, to date, has cost many times more than the cost of the promised park.

For years, the parties have disputed whether Hidden Glen timely filed an administrative claim with the City (Gov. Code, §900 et seq.) and whether the City's conduct lulled Hidden Glen into delaying presentation of its claim such that the City is equitably stopped from raising the one-year claims filing period (*id.*, § 911.2) as a defense. Eventually, the trial court bifurcated and tried first the issue of whether the City is equitably estopped from asserting the claims filing period. After rendering a tentative decision that the City was estopped through March 2009—a victory for Hidden Glen—the court, in its final statement of decision, ruled the City was estopped only through April 2008. The City then moved for judgment on the pleadings on the ground the

court's equitable estoppel findings conclusively establish Hidden Glen's breach of contract claims are barred for failure to timely present a claim. The court granted the motion. Hidden Glen contends the court erred and, at the very least, should have granted leave to amend.

As we discuss, this case has had an unusual and prolonged procedural history. We conclude the trial court erred, in part, in granting judgment on the pleadings and remand for further proceedings. We also reverse the associated fee and cost rulings, and additionally reverse the judgment as to the sixth and seventh causes of action and direct that they be dismissed without prejudice.

BACKGROUND

This is our second look at this case. In a previous writ proceeding, we described the origins of the dispute. (*Hidden Glen Partners, LLC v. Superior Court of Napa County* (Dec. 19, 2012, A135029) [nonpub. opn.] (*Hidden Glen*).) "In May, 2001, a settlement agreement was executed regarding the closure of the Hidden Glen Landfill in Napa. In exchange for dismissal of the lawsuit filed against Napa and others, Napa agreed to 'assume responsibility for the closure of the Landfill, pursuant to [a] Closure Plan . . . .' " (*Id.*)

Under that closure plan, the landfill would be capped with various composites and soils. Then, " '[t]he cap will be covered with a playing field turf which will be irrigated. A 20-foot buffer will be maintained around the perimeter of the landfill. The landfill area will be maintained as a dedicated open space within the residential development for recreational use.' " (*Hidden Glen, supra*, A135029.) The closure plan estimated the total cost " 'for completing the cap installation . . . is $400,000 to $450,000, plus or minus 15%,' " and the cost " 'for installing irrigation and the turf field is $50,000 to $70,000, plus or minus 15%,' " assuming nearby power and water. (*Id.*)

When closure was incomplete eight months after execution of the settlement agreement, the parties entered into a "Subdivision Improvement Agreement" (SIA), which, among other things, extended the parties' performance obligations for at least two years and obligated Hidden Glen to install water and power hookups for the park.

(*Hidden Glen, supra,* A135029.) (We refer to the settlement agreement, the closure plan and the SIA as the "park-related agreements.")

Hidden Glen installed the water and power hookups in 2005, but no park has been built.

The Lawsuit and Initial Pleadings

After years of discussions with the City, Hidden Glen, in January 2010, presented a claim to the City demanding several million dollars in contract-specified and other damages related to impeded marketing of the residential parcels. The claim asserted, among other things that: "In breach of and contrary to its obligations under the 2001 Settlement Agreement, the SIA and the approved Closure Plan, the City has never installed the required irrigated playing field turf on the City Property. The site has yet to be opened as a public park. As a result of the City's breaches and failure to live up to its contractual obligations as set forth herein, and even though the City has repeatedly promised HGP that it would do so, eight years later the City Property remains an unsightly, unirrigated weed patch in the middle of the Hidden Glen Subdivision, fenced off by a cyclone fence . . . . [¶] . . . Only recently, the City has rejected HGP's demands to complete the park and has improperly taken the position that it has no obligation to install the required sod turf, or to complete the construction of the public park contemplated by the 2001 Settlement Agreement, the approved Closure Plan and the SIA."

Its claim rejected, Hidden Glen proceeded with a lawsuit in superior court.

The City demurred on several grounds, including that Hidden Glen's first, second and third causes of action—all alleging breach of the City's obligations under the park-related agreements—are barred for failure to timely present a claim.[1]

[1] Although the parties have repeatedly characterized the timeliness issue as a "statute of limitations" issue, it is not. There is no dispute that Hidden Glen timely filed its lawsuit in relation to the denial of its claim and, thus, complied with the statute of limitations for filing suit. Rather, the issue is one of the timeliness of Hidden Glen's administrative claim, a prerequisite to filing suit against the City.

In opposition, Hidden Glen asserted the "City's duty to install the irrigated turf playing field and public park on the Landfill Property is a continuing one, which it continues to breach to the present day." It further asserted, given the penalty clause in the settlement agreement, that "the City's liability continues to accrue for each day that the City fails to install the playing field turf for the public park in accordance with the approved Closure Plan."

Hidden Glen also filed a first amended complaint, which included the three causes of action pertinent to the park—for breach of contract, specific performance, and declaratory relief—and mooted the City's demurrer. Hidden Glen alleged, among other things, that the "City has breached and continues to breach the 2001 Settlement Agreement and the SIA by, among other things, repeatedly promising to install an irrigated playing field turf or otherwise complete the construction of the public park which was contemplated and required under" the terms of the park-related agreements. It also alleged the settlement agreement included a $1,000 per day penalty/liquidated damages provision if the remedial work in the closure plan was not completed eight months from execution of the settlement agreement and that the "remedial work included the installation of the irrigated playing field turf which the City has failed to install."

The City again demurred, again raising the one-year claims filing period. Hidden Glen reiterated its opposition based on its continuing breach theory.

The trial court sustained the City's demurrer with leave to amend. The court agreed with the City "that as currently pled the [contract] claims are barred." "As is clear from the complaint's allegations," stated the court, "the alleged breach occurred in February 2002 [i.e., eight months after execution of the settlement agreement], rendering the January 2010 complaint long time barred." The court rejected Hidden Glen's "continuing breach" theory (which was based on the fact the contract contained a liquidated damages clause), stating no authority supported it. Because Hidden Glen claimed it could allege facts supporting equitable estoppel to assert the limitations period, the court granted leave to amend. The court "question[ed]," however, "whether the estoppel theory w[ould] withstand scrutiny since it [was] apparently based upon the

City's conduct in 2007, after the [period of] limitations would have already run" (i.e., having commenced running, according to the court, in 2002, eight months after execution of the settlement agreement).

Hidden Glen filed its second amended complaint (the operative complaint)[2] in May 2010, alleging the "City has breached and continues to breach the 2001 Settlement Agreement and the SIA by, among other things, failing to install an irrigated playing field turf or otherwise complete the construction of the public park which was contemplated and required under" the terms of the park-related agreements. As for the $1,000 per day liquidated damages provision, Hidden Glen alleged it was operative eight months after the settlement agreement was executed until completion of the park.

Hidden Glen emphasized the SIA, which allegedly extended the parties' obligations such that Hidden Glen would install the utility hookups and the City would then be obligated to install the turf and build the park. The hookups were completed in February 2006. Hidden Glen further alleged that from January 2002 to as late as March 2009, the City repeatedly promised, assured and made representations to Hidden Glen that the City was going to perform its contractual obligations and complete the park to induce Hidden Glen not to sue the City for breach of contract. Hidden Glen fleshed out this allegation with a number of specific allegations of promises and assurances by the City. It then alleged "[t]he first time the City informed [Hidden Glen] that it would not move forward with installing the irrigated playing field turf and completing the park improvements was on March 5, 2009"—the date of an e-mail from the City to Hidden Glen, wherein the City allegedly "disavowed . . . previous assurances" to "install turf and cap the playing field turf or complete the park."

The City demurred once again, claiming Hidden Glen had not pleaded sufficient facts to support equitable estoppel against a government entity.

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[2] To facilitate then-planned mediation, the second amended complaint was, by stipulation, later refiled without alteration in early 2011 in a new "refiled action" bearing the current trial court number.

This time, the trial court overruled the City's demurrer, explaining: "Plaintiffs' SAC [(second amended complaint)] alleges that in January 2002 the City informed them that it was deviating from the Closure Plan, and intended to delay installation of the irrigated playing field turf until after water and power were installed in conjunction with residential development, which installation was to be undertaken by plaintiffs. The SAC further alleges that from January 2002 to March 2009 the City asked that plaintiff 'not sue the City and agree that the City could have additional time to install the turf . . . .' " This was sufficient, said the court, to raise a triable issue.

Summary Adjudication Granted to the City, then Reversed

The City next moved for summary adjudication on the contract causes of action, claiming there was no evidence it had any enforceable obligation to "(1) install irrigated playing field turf" or "(2) construct a public park." It additionally claimed these causes of action were barred by the one-year claims filing period.

The trial court granted the City's motion, ruling the parties' agreements were unambiguous and created no obligations regarding a park; rather, they suggested only an " 'anticipated future outcome.' " (*Hidden Glen*, *supra*, A135029.) Given its ruling, the court did not address the timeliness question. (*Id.*)

Hidden Glen filed a petition for writ of mandate, which we granted, concluding the park related agreements were reasonably susceptible to Hidden Glen's interpretation. (*Hidden Glen*, *supra*, A135029.)

We declined to affirm the summary adjudication on the alternative ground Hidden Glen had failed to file a timely claim, stating in pertinent part: "Though not addressed by the trial court, Napa maintains the summary judgment of the first three causes of action must be upheld because, as a matter of law, those causes of action were barred by the statute of limitations. Hidden Glen pleaded estoppel in its operative complaint, and the trial court, in overruling Napa's demurrer to that complaint found it 'adequately allege[d] facts to support a theory of estoppel.' [¶] ' " An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped. [Citation.] To create an equitable estoppel, 'it is enough if the party has been induced to refrain from using such

means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.'. . .' ' (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152–1153.) '[W]hether . . . reliance was reasonable depends on a myriad of factual questions.' (*Id*. at p. 1153.) Thus, summary adjudication would not have been properly granted on this basis." (*Hidden Glen, supra*, A135029.)

Pretrial Motions

Following the writ proceeding, a jury trial was scheduled for June 10, 2013.

Four months before the scheduled trial date, the City moved to have the court first try the issue of equitable estoppel. The City claimed the court had "already held" Hidden Glen's contract claims were barred by the one-year claims period and the "only reason" the parties were preparing for trial was Hidden Glen's claim that the City was equitably estopped to raise the filing period. The City further represented the evidence pertaining to equitable estoppel had "no probative value to the other issues in the case" and was "irrelevant to the proper interpretation and/or alleged breach of the 2001 Settlement Agreement." The City then variously argued Hidden Glen had to overcome an exceedingly high bar to estop a public entity, trial of Hidden Glen's contract claims would require extensive discovery, and a finding of equitable estoppel would potentially avoid a "waste of hundreds of thousands of taxpayer dollars" litigating the claims. The City also maintained the court, exercising its equitable jurisdiction, would be a more just finder of fact, as "[j]uries always view technical defenses like the statute of limitations disfavorably." "The jury," asserted the City, "should not be allowed to hear evidence that is extremely prejudicial to the City, but that is not relevant to a single issue that they will be called upon to decide."

Hidden Glen opposed bifurcation. It disputed that its contract claims were time-barred, asserting this court's opinion in the writ proceeding determined there were triable issues as to the timeliness of its claims and this "superseded" the trial court's earlier demurrer ruling. In Hidden Glen's view, its "contract claims [were] alive and well–and not time barred in the least." Hidden Glen also took issue with the City's assertion the evidence pertaining to equitable estoppel was irrelevant to the merits of the contract

claims. As Hidden Glen saw it, the "issues of contract interpretation and performance (and the lack of such performance by the City) are inextricably intertwined with the City's conduct giving rise to an estoppel to assert" a time bar. "The 'conduct and writings' of both Hidden Glen and the City between 2002 and 2009 goes to both the equitable estoppel and the fundamental issues of contract interpretation and performance in this case."

The court granted the City's motion, stating "it does not appear that the evidence on the equitable and jury issues is so intertwined as to render a bifurcation pointless. Although there may be some factual overlap between the court and jury issues, the court concludes that such overlap is likely to be minimal, and not a justification for requiring the entire case to be presented to the jury before the equitable issue is decided." The court scheduled the bifurcated court trial to commence June 10, and a jury trial to commence October 21.

Just prior to the bifurcated bench trial, Hidden Glen filed a trial brief. It summarized its contract claims, in pertinent part, as follows: The settlement agreement and closure plan "required the City to remediate the former Hidden Glen landfill site and install an irrigated turf field for a future public park on the site, within eight months of execution of the Settlement Agreement . . . . But in July 2001, the City informed HGP's predecessor that it would be unable to install the irrigated turf field for the park until water and power was brought to the landfill site. . . . [T]he City's inability to perform . . . was not excused, but merely deferred, and was ultimately addressed . . . in the Subdivision Improvement Agreement . . . . The SIA required HGP to supply the water and power connection . . . as a condition precedent to the City's requirement to install the turf and build the park . . . . [¶] . . . Despite repeated reassurances from the City both before and after that time (and up until March 5, 2009) that the park would be built 'soon,' a park with turf field has yet to be installed and the park has yet to be built."

Hidden Glen then variously characterized the dispute as involving the City's "contractual obligations to build the park with a turf field," an "agreement to put in the park," an "obligation to provide for the park," an "agreement that the City would have

more time to install the turf and irrigation system so that the park could be constructed," the City's "obligation to install an irrigated turf field and build a public park at the former landfill site," a "contractual obligation to build the park," an "obligation to build a park at Hidden Glen" and a "legal obligation to get the park built in a reasonably timely manner." In addition, citing to a CACI[3] *jury* instruction on estoppel to assert the statute of limitations (which it concededly had overlooked in opposing the City's motion to bifurcate), Hidden Glen urged the court to reconsider its bifurcation ruling and to submit the entire case to the jury.

The City also filed a trial brief. It had an entirely different take on the park situation. The City maintained it had "*never* conceded that it had a legal obligation . . . to construct a park with irrigated turf." Rather, other parties involved in the closure of the landfill had remedial obligations. Furthermore, one of those parties had made it clear in 2002 that it was not going to install an irrigated turf park as part of the remedial work. Thus, any purported breach of contract claim should have been brought then, said the City. Indeed, the City claimed Hidden Glen, in its government claim and amended complaints, "acknowledged" the "date of breach was February 4, 2002," and the trial court had "held" as much in its order sustaining the City's demurrer with leave to amend. The City further maintained Hidden Glen did not reasonably rely on any asserted representations by City personnel, and, finally, even if it could prove all the elements of equitable estoppel as to a private person, the City, as a public entity, still could not be estopped because this was neither an " 'exceptional' " case nor one in which " 'justice and right' " required estoppel.

At the readiness conference on June 6, 2013, the trial court agreed to reconsider bifurcation and directed the City to file a brief responding to Hidden Glen's arguments based on the CACI instruction.

The City duly filed an additional brief, leading with its argument that the court "has already held" (in its demurrer ruling) that Hidden Glen's claims arose in 2002 and

[3] California Civil Jury Instructions

are time-barred, followed by much complaining that Hidden Glen was making an unwarranted, 11th-hour request that the court revisit its bifurcation order. The City further maintained equitable estoppel was, indeed, a matter for the court to decide, and the court had already concluded that "while there may be some factual overlap between the court and jury trial issues," such overlap was "likely to be minimal." The CACI instruction could be explained, said the City, as either a guide for an advisory jury or appropriate where the parties agree to submit the equitable issue to the jury.

Hidden Glen filed a reply, again disputing there had been any determination its claims were untimely. As for the trial court's order sustaining the City's demurrer with leave to amend, Hidden Glen pointed out it had filed a new pleading, alleging new and additional facts. These "beefed up allegations," said Hidden Glen, would "support a finding that the City's alleged breach of the contracts did not occur in February 2002, as HGP had previously alleged." It further asserted that its contract claims were based on the park-related agreements, and "[a]s the SIA was not executed until September 6, 2002, and completion of the water and power connections did not occur until later 2005 or early 2006, the City is effectively estopped from any argument of an accrual date prior to that time." Hidden Glen also repeated its assertions that the CACI instruction indicated it is proper for a jury to decide whether a defendant is equitably estopped to assert the statute of limitations and that in this case there would be substantial overlap in the evidence relevant to estoppel and to the issues of "contract interpretation and performance . . . as well as the issue of when HGP's claims against the City accrued . . . and amounted to a breach of contract."

At the June 11, 2013 hearing and scheduled trial date, Hidden Glen continued to argue it was entitled to a jury trial on contract issues and the limitations period, and that the evidence on these legal issues would largely overlap the evidence relevant to equitable estoppel. Stating Hidden Glen was not saying anything new, the court reaffirmed its decision to bifurcate.

The court denied, however, the City's in limine motion to bar Hidden Glen from presenting any evidence that its contract claims accrued "other than February of 2002."

Hidden Glen had argued, in opposition to the motion, that it had long "maintained . . . the basis of its 2006 accrual date is the breach of the Settlement Agreement, Closure Plan and SIA," the latter of which did not even exist in February 2002.

The Bifurcated Trial

At the outset of the equitable estoppel bench trial, the parties presented opening statements.

Hidden Glen traced the genesis of its contract claims, starting with the closure plan which contemplated irrigated turf as the final layer of the landfill cap and maintenance of the site as a park, and moving to the settlement agreement which incorporated the closure plan obligations by reference. According to Hidden Glen, the timing of these obligations was later adjusted by the parties and modified in some respects pursuant to the SIA, for example, by Hidden Glen agreeing to provide water and electrical hookups for the park. In ensuing years, the City raised a number of issues, but always assured Hidden Glen the park would be built. Hidden Glen claimed it was not until March 2009, that it "had any inclination at all that the city was saying maybe the park wouldn't be built."

While Hidden Glen largely focused on what it claimed was the City's continuing obligation—to build a park with irrigated turf—it wrapped up its opening statement by stating "we, of course[,] are seeking damages, we are seeking the City be required to put in the park and [*sic*] they recognize that they were going to do, and we are seeking to have the city put in the irrigated turf that they are required to put in."

In its opening statement, the City maintained it "never conceded" it was "legally obligated to construct a park on irrigated turf on the landfill portion of the site as part of their remedial work obligation." Rather, the City claimed it merely accepted a dedication of the parcel for " 'purposes of a future park,' " which it endeavored to build and, in fact, still intends to build, but not with irrigated turf. According to the City, the closure situation was fraught with " 'lawyers double-speak,' " involved owners and developers that wanted the landfill site out of their chain of title, and Hidden Glen, a sophisticated developer represented by experienced counsel, delayed filing suit for business reasons.

Nothing the City said or did supported equitable estoppel, let alone estoppel against a government entity.

Thus, both Hidden Glen's and the City's opening statements focused on whether conduct and statements by City officials and employees estopped the City from raising the one-year claims filing period. Neither party suggested the trial court would make findings as to the nature and extent of any contractual obligations, breaches thereof, or the accrual of any breach of contract claims.

Trial proceeded, and when a City witness testified it was "still our objective to build a park," Hidden Glen moved for a "directed verdict," contending that if it was the City's position that it was still going to perform—which Hidden Glen asserted meant the City believed it still had time to perform and was not in breach—there was no need to reach the issue of equitable estoppel.

The City responded this was a "fascinating position," but "the issue of whether we were legally obligated to construct the park is not before the court today." Rather, the issue was the timeliness of Hidden Glen's administrative claim that preceded its lawsuit.

Hidden Glen replied the jury was to decide "was there an obligation on the City to perform within a certain time period, and if so, did they perform within that time period, and if so, did we wait too long to bring our lawsuit." "But," said Hidden Glen, "with the City saying there is no breach, there is no time period within which they were supposed to perform, we can't possibly have a statute of limitations running against us . . . . They are saying they don't have to perform even as of today. Therefore, it's going to be up to a trier of fact to decide if that's the case or if, in fact, there was a statute of limitations that should have been running from some earlier time period."

That position, retorted the City, was contrary to "the pleadings" and Hidden Glen's "arguments." According to the City, Hidden Glen's position was that its claims were "clearly time barred," but "the City's representations over the years have stopped us." That, said the City, "doesn't raise issues of accrual date because they have already made representations that the statute of limitations has expired." "If the court finds that they are not barred by the statute of limitations we will move on to a question of whether

or not there is a legal obligation to construct the park." The City then accused Hidden Glen of an "attempt to conflate again equitable estoppel with statute of limitations issues."

Pointing to the testimony it had elicited, Hidden Glen claimed the City could not have it "both ways." "They assert a statute of limitations defense saying the breach occurred previously, therefore we are barred, which is that to which we asserted equitable estoppel. They are now testifying, however, their witness has testified they are not in breach, they haven't breached, they had no time within which they had to put in this park, so if that is in fact their position, they can't have it both ways."

At this point, the trial court asked counsel for the City, "When do you contend the statute of limitations started running?" Counsel replied, "February of 2002," eight months after execution of the settlement agreement. Saying it had not yet heard enough evidence, the court denied Hidden Glen's motion.

As the trial continued, the parties disputed the relevancy of a number of documents. The City asserted they were relevant only to whether it had any contractual obligations it had breached; Hidden Glen asserted they were relevant both to contract issues and to whether the City was equitably estopped to assert the limitations period.

In the course of this argument on relevancy (and a claim of joint defense privilege), Hidden Glen asserted the City was "claiming that the first breach occurred" before Hidden Glen even acquired the property. The City responded it "thought the parties and the court was [*sic*] all operating under the assumption of the factual finding of whether or not there was a breach of the contract is going to be before a jury."

The court then queried, "Isn't one issue in connection with the estoppel when the breach occurred, and then when did the statute of limitations start running . . . ?" Only, responded the City, to the extent there could potentially be a breach, not whether there was in fact a contractual obligation and a breach. "And once you find that accrual date, then you do your analysis of whether or not . . . certain statements rise to the level of equitable estoppel." The City also reiterated its position that "if there was a breach, it started in 2002." (Thus, despite having previously asserted "accrual" was not an issue

before the court, the City seemingly now agreed with the court's apparent view that "when the breach occurred" was necessarily part of the equitable estoppel determination.)

Hidden Glen did not take issue with the City's posited analytical template. Instead, it focused on the evidence and took issue with the City's claimed 2002 breach date and relevancy objections. "[T]here is no way with that agreement [to provide water and power] that you can say the statute of limitations starts running [in 2002,] eight months out from the signing of the Settlement Agreement." "It starts running at whatever time is when Mr. Moore said July of '05, and we thought it was six months—reasonable time was six months after that." As long as the City continued to insist the one-year period had to have commenced in 2002, Hidden Glen maintained the disputed evidence was "relevant to show why" that was not the case. Ultimately, said Hidden Glen, whether the court viewed the evidence as pertaining to "a contractual commitment or simply a representation that was relied on, it [was] both," and therefore it was "very relevant" to the City's assertion "accrual was eight months after the contract was signed." The parties, in the end, stipulated to the key exhibit's admission.

Trial spanned eight days. Hidden Glen's case consisted of evidence the City repeatedly assured it the park was going to get built, until the March 5, 2009 e-mail. That e-mail stated in relevant part: "[T]he park is not going to get built in the spring without the driveway issue being resolved first because the City will have no practical access to the park site in that the current legal access is too steep for the City to get the necessary equipment to the site." According to Hidden Glen, this was the first time the City told it no park would be built unless Hidden Glen provided additional access for construction purposes.

Prior to that e-mail, and after Hidden Glen had installed water and electricity at the park site, communications with the City indicated the park was moving forward. For example, in a June 2007 letter to Hidden Glen, the City's director of community resources stated: "I would like to clarify some of the points of our agreement regarding park site development . . . . [¶] . . . You have my assurances that park design and construction has the highest priority and will be completed by the end of the year."

Shortly thereafter, the City prepared a plan for the design and construction of the park, total design and construction costs being set at $225,000. Relying on the City's conduct, Hidden Glen referenced the coming park in brochures given to prospective homebuyers, and those purchasers later asked Hidden Glen about the park when none was forthcoming.

In the midst of the apparent progress towards the park, a "driveway issue" arose. When the City began to design the park, it decided to add features to increase accessibility for physically challenged users. The City wished to add a driveway that would accommodate both wheelchair-bound users and those using motorized vehicles who wished to travel from the bottom of the park up an incline to the parking area. While the parcel that was designated for the park had 80 feet of access along a street, Pascale Place, that access did not allow for a driveway of sufficiently minimal grade to accommodate the City's accessibility goals. Several ideas were discussed. Eventually, the City, Hidden Glen, and another landowner (with property adjoining the 80-foot access area) agreed to a "Shared Driveway Agreement" which contemplated a looping access road extending beyond the 80-foot access and onto the other landowner's property. The three signatories agreed to share the cost of construction. The agreement eventually unraveled when the other owner decided not to build on its property and pulled out of the agreement in late 2008. In Hidden Glen's view, this scuttled the three-party agreement, and it backed out about six months later, around June 2009.

Hidden Glen's position at trial was that the disability access issue was entirely separate from whether the City had the "access" it needed to construct the park, and the City's March 2009 e-mail was the first communication Hidden Glen ever received stating the City thought the existing access for *construction* was insufficient. Prior to that time, the City had told Hidden Glen it could build the park using, in the words of its March 2009 e-mail, "the current legal access"—that is, the already-existing 80 feet of access along the nearby street. In 2008, for example, the City had stated one of the shared driveway options, *or* the already approved original access, were both workable. Further,

a City employee conceded the City's March 2009 e-mail was a "change in position" from earlier letters to Hidden Glen.

The City's position was that disabled user access and construction access were linked. The City pointed to several communications stating it would not begin construction of the park until the disability access issue was solved and a road built. A July 2007 e-mail sent to Hidden Glen stated, "The only thing that would delay the park project would be delay in constructing the road." A September 2008 communication on which Hidden Glen was copied stated, "[T]he design of the park is in its final stages and the City will be ready to bid that project for construction within the next 60 days, but the City will be unable to do so until the driveway is constructed."

The City also focused on the planning process for the park and creation of a Master Plan, which, when publicly presented and approved by the parks and recreation advisory commission and city council in April and May 2008, excluded irrigated turf and discussed access.

The April 16, 2008 Parks and Recreation Advisory Commission Agenda Summary Report, for example, acknowledged "[d]evelopment of this site as a City Park is required as part of the original settlement agreement of closing this former landfill site," but also stated: "Due to the limitations on the site a passive park design concept was chosen. This design would incorporate the separate driveway and barrier fence for the buffer adjacent to the quarry face to the east. Design would consist of pedestrian access to the park and a loop trail. The pedestrian access will consist of a stairway from Pascale Place. ADA[4] access will be provided from the ADA parking stall at the top of the driveway and connect to the loop trail. The trail will be ADA accessible. Benches will be placed throughout the park along the edge of the path. Earlier design concepts considered an irrigated turf area but due to the limitations and potential issues with the cap it was decided not to install irrigation. Instead water will be brought into the park via a quick connection and the open area will be vegetated with native grasses. Some native trees at

[4] Americans with Disabilities Act of 1990 (42 U.S.C.A. § 1201 et seq.; ADA).

the entrance and on the hillside away from the cap will also be included. As indicated in the design additional signage, bollards and a dog bag dispenser will also be installed."

The commission approved the park plan and its $225,000 cost, and forwarded the plan to the city council for final sign off.

In the notice of public hearing for the May 20, 2008, city council meeting, the park was again described as a "passive neighborhood park on the top of the capped landfill" with "walking trail, benches and open space area planted with native grasses." "Access for the park" would be "provided by a stairway and a shared use driveway." The city council agenda report for the meeting echoed the earlier documents and further explained: "In evaluating excavating the area for an irrigation system and the probability of future irrigation breaks and possible damage, the design was altered to exclude the irrigation system in order to protect the integrity of the cap." To that end, "[t]he center section of the park will be planted with native seasonal grasses. Native trees will be planted along the hillside at the park entrance. Water will be brought into the park for the drip irrigation system for the trees and a hose bib for hand watering if necessary." The report noted, "One of the final challenges is access to the site. A shared use driveway will provide both vehicular access to the site and two of the neighboring properties." At the May 20, 2008 meeting, the city council approved the plan for the park.

In its closing argument, Hidden Glen again focused on its claim that the City had a contractual obligation to build a park with irrigated turf. According to Hidden Glen, the City repeatedly acknowledged that obligation and repeatedly assured Hidden Glen it was going to fulfill it.

When Hidden Glen reached the June 2006 time frame in its largely chronological discussion of the evidence, it stated: "Now, you will recall, Your Honor, that Mr. Moore [(one of Hidden Glen's partners who interfaced with the City during the park planning process)] testified that about six months after completion of the water was when they would have expected a reasonable time for the City to have the park in. When you don't have a time specified, as you know, I'm sure[,] the measure is a reasonable time period. [¶] The City I think has suggested because there is no time, they can do whatever they

want. That's not the law. And that's not what we're here to deal with. [¶] But in any event, we have suggested that six months after July of 2005, sometime in early 2006 or maybe after the rain stopped." Hidden Glen then turned to a document, prepared four or five months after the start of 2006, reflecting a meeting at which a Hidden Glen representative told the City the park "was past due."

Hidden Glen also addressed the driveway/access issue, asserting there was no evidence it had any contractual obligation to pay for additional access. It, nevertheless, was willing to try to assist the City with its desire to make the park ADA friendly, and it delayed filing a claim and suit in light of the City's repeated requests for help on that issue and assurances the park would be built. For example, a key City employee was asked, "Did you ever say to them [(Hidden Glen)] we're not going to put the park in?" and replied, "No, I didn't." "Did anybody on the City side that you are aware of ever tell them that you weren't moving forward with the park?" "Not that I can recall." And when Hidden Glen raised the prospect of legal action, he assured it "the City was doing the best it could to get it [the park] done as fast as we can." "I reassured them that I had told them I was going to try to complete it by the end of the year, and that was my objective."

But, then, in mid-2008, the three-party shared driveway agreement, which the City felt solved its desire for ADA accommodations, fell apart when the third party decided not to develop its parcel and abandoned the agreement. After that, Hidden Glen made repeated inquiries about the status of the park, and in March 2009, the City finally sent what Hidden Glen viewed as the pivotal document—the e-mail announcing the City was not going to build any park at all because it assertedly had inadequate access for construction. The principal City employee involved in the access road issue admitted this was "a change" in the City's position. At that point, with the City now demanding that Hidden Glen build additional access for construction, it "knew that the City was now putting up unreasonable excuses and unreasonable conditions on the performance to put in the park that they had owed us from way back[,] certainly in 2005."

As Hidden Glen concluded its argument, it commented "it will be interesting to hear what the City is going to say about when the statute started running. We don't think it—we think it started probably sometime in 2006 within a reasonable time period after we put in the water and power. [¶] But to cover the bases, we have addressed the entire time frame and the entire spectrum. [¶] At every step of the way the City and its representatives assured everybody involved they were going to perform."

The City, in turn, continued to dispute that it had any legal obligation under any document to build the park and reminded the court that contract issues were not before it. It also continued to maintain that the one-year claims period began running in 2002 "expired in February of 2003." The only way Hidden Glen could "beat[] back that airtight defense," said the City, was if the City was equitably estopped, and the City went on to argue a daunting showing is required to equitably estop a government entity.

The City then broke the time period into three "hurdles" which Hidden Glen assertedly had to clear. The first was the time frame between February 2002 (eight months after the execution of the settlement agreement), when the City maintained the limitations period started running, and February 2003, when the City maintained the limitations period expired. The second was the time period early 2005 up until early 2008. The third hurdle was April and May 2008, when the city parks and recreation advisory commission and the city council approved the park plan, which specified native grasses and referenced only drip irrigation and hose watering. The City asserted this planning process made it clear the park would not have "irrigated turf" and an "access road" had to be constructed by the "developer."

According to the City, Hidden Glen could not rely on assurances the City was going to build "a park," but rather, it had to show the City promised it was going to "build a park on the terms that you believe we were required to build the park." Thus, the City did not "deny" that staff "told Hidden Glen Partners that it was moving as fast as it could to get the park built, that it had every intent to get a park built, wanted to get a park built." But "[t]hat is just not the same thing as the City saying that they will build a park on the terms demanded by Hidden Glen. And it is that that Hidden Glen has to show in

order to satisfy the elements of equitable estoppel." As for specifics, Hidden Glen "made it clear that without irrigated turf the City is in breach." And as for the driveway/access road, the City acknowledged "maybe they're right. Maybe that position [by the City] was a breach of the agreement"—but the City insisted that that had been its position since 2006, meaning the claims filing period ran long before Hidden Glen filed suit.

In rebuttal, Hidden Glen spent substantial time responding to the City's claim that, for years, it had taken the position no park was going to be built without additional access. Hidden Glen asserted it had no obligation to provide the City's desired access. Moreover, the City never told *it* no park would be built without additional *construction* access, until March 2009. The City could not "say to us you got to help us with that road or we're not building the park, which is what they're now saying." Hidden Glen further asserted that when the City conditioned building the park on Hidden Glen's building additional construction access, "[t]hat's when the breach occurred." The court then asked, "And when do you claim that happened? When that breach occurred?" Hidden Glen replied, "It started in March. It certainly arguably was March of 2009. But it certainly was finalized in September of 2009 when he [(the City official)] sent us the letter saying you either—we are going forward, and you have to participate in this agreement."

Hidden Glen also spent time responding to the City's assertion Hidden Glen should have known by at least April and May 2008 (when the parks and recreation advisory commission and city council approved the plan for the park) that the City was not going to install irrigated turf and the park was conditioned on additional construction access. Hidden Glen pointed out that at that time the voluntary driveway/access agreement was in place, and it reiterated that the City had never taken the position that, absent additional access, no park would ever be built. As for the irrigated turf, Hidden Glen's view was that by providing for watering through a "quick connect" system, the City was going to adequately comply with the generic irrigation requirement of the Closure Plan, and that specifying native grasses, likewise, was not inconsistent with the plan's generic "turf" requirement.

Court's Tentative Decision: City Is Equitably Estopped Until March 2009

Following trial, the court announced a lengthy tentative decision from the bench in favor of Hidden Glen.

The court commenced by stating "the issue presented is is the Defendant City of Napa estopped from asserting the statute of limitations as a bar to plaintiff's claim***s*** against the City for breach of contract." (Italics and bold added.) It then set forth the legal requirements for finding a public entity equitable estopped and announced it found the City estopped from asserting a limitations period. The court went on to explain its estoppel determination in great detail, borrowing the City's "three hurdles" format.

As to the City's first claimed hurdle—that the one-year claims filing period began running eight months after the parties executed the initial park-related documents, i.e., by February 4, 2002—the court found the parties subsequently agreed the City had no obligation to perform until after Hidden Glen installed water and power on the site. Said the court, "There is simply no credible evidence that a breach of the Settlement Agreement, Closure Plan and/or Subdivision Improvement Agreement accrued in 2002."

As to the second hurdle—which the court characterized as commencing with a breach of contract that "accrued" six months after Hidden Glen installed water and power on the park site, i.e., by early 2006—the court found Hidden Glen reasonably relied on City assurances the park was going to be built. "The court finds that for years both parties, City through City staff, believed that the City was obligated to build a park with a turf surface on the site." City officials "all testified that they believed the City had a contractual obligation to build the park and their jobs were to ensure that that happened." "No one on the part of the City denied that the City had an obligation to put in a park." "Moving into 2006, the ADA access issue came up." "[I]n January 2008, the Shared Driveway Agreement was executed but then there were subsequent problems getting Glory Partners [the other landowner] to cooperate." In August 2008, "Glory Partners has not started construction of the driveway." Seven months later, the City's March 2009 e-mail is sent stating no park is going to be built unless the driveway issue is resolved because the current access is " 'too steep' " for " 'the necessary equipment.' " One of the

City employees who had been working on development of the park "acknowledged at trial that that was a change in the City's position." One of Hidden Glen's owners testified "he was shocked because earlier the City had said that they didn't care which access was used, that this was the first time HG[P] learned that the City might not go forward with the park." "The issue is whether the City said or did something to cause HGP to believe that it would not be necessary to file a lawsuit, and the [court] finds that to be true."

The court then addressed the City's posited third hurdle—that, at the very least, Hidden Glen knew by the date of the park commission meeting, April 15, 2008, that the "City intended to build a park without irrigated turf and after the shared driveway was constructed." With respect to the driveway issue, the court pointed out that at that point in time, the Shared Driveway Agreement was still in place; it was not until "later [that it] went sideways because of Glory Partners." Thus, at that time, "there was nothing about the shared driveway issue that triggered any accrual in April 2008." As for the irrigated turf issue, the court stated Hidden Glen's representative had concerns about the City's apparent abandonment of underground irrigation, but was assured by a city employee at the commission meeting that the City still intended to irrigate the park but with "a quick coupler connected to the oversized line that HG[P] has installed." The court found that, given the history of the park discussions, Hidden Glen continued to believe there would be some kind of lawn, but with overhead irrigation.

Having found Hidden Glen cleared all three "hurdles," the court went on to find all the elements of equitable estoppel existed. "In the context of the years of obstacles faced by both parties and the desire shared by both parties to complete the park and the willingness shown by both parties to keep the project moving forward through exhaustive negotiations, the court finds that HGP proceeded diligently to file suit once it discovered the actual facts." As for the City's continued insistence it never had any contractual obligations with respect to the park, the court stated, "allowing estoppel here would not nullify [the public policies concerning the manner in which a city becomes contractually bound]. It will simply allow HG[P]'s claim to proceed in court. A trial will determine

what the terms of the contract documents are and what the City's obligations are, if any." As for the injustice that would ensue if the court did not find the City estopped, the court stated, "After years of negotiation and the interests at stake, including the owners w[ho] bought lots in the subdivision, the court finds that it would be a grave injustice if this matter is not resolved in a proper legal forum."

The court concluded by stating its tentative decision would become its statement of decision unless either party specified controverted issues or made proposals pursuant to California Rules of Court, rule 3.1590(d).

Court's Statement of Decision: City Is Equitably Estopped Only Until April 2008

The City filed a request for a statement of decision, listing 25 purported controverted issues. These ranged from a request that the court, assuming the City had a contractual obligation to install irrigated turf, explain "when did that alleged obligation accrue," to a request that the court state "what facts" demonstrated that the City's March 2009 e-mail stated "that the park would not be built unless access to the former landfill site was first constructed," to an inquiry whether the court "has or has not made a determination that the City has an obligation to build a city park with an irrigated turf field."

Hidden Glen submitted a proposed statement of decision largely memorializing the court's ruling from the bench, augmented by some legal discussion (mostly in footnotes) supplied by Hidden Glen. The proposed statement stated all but two of the City's identified issues were "addressed, in the narrative portion" of the statement. One of these two excluded issues was whether the City had a contractual obligation to build a park with an irrigated turf field.

The City filed a lengthy objection to the proposed statement. It objected to all of the additions Hidden Glen made to the court's tentative ruling and variously argued the court erroneously engaged in construction of the park-related agreements in concluding the City's alleged obligations under the settlement agreement were modified by the later subdivision improvement agreement, there was insufficient evidence to support equitable estoppel in what the City called a "promise to perform" case, the court had not found

reasonable reliance and there was no evidence to support such a finding, and the court's injustice determinations were legally and factually insufficient.

At the November 15, 2013, hearing on its objections, the City devoted much of its time to arguing that the evidence did not support the trial court's tentative decision as to what the City had called the third hurdle, i.e., that Hidden Glen should have been aware by at least April and May 2008, during the park planning process, that the City was not going to install irrigated turf and was going to build the park only after additional access was constructed. From the City's perspective, the evidence strongly weighed against Hidden Glen's assertion that, at the park commission hearing, a City official indicated the City would provide irrigation by overhead sprinkler and therefore Hidden Glen was not put on notice of an alleged breach of the park-related agreements. Again, the City did not dispute that it intended to build a park. "It passed a master park plan. It has the park approved by the city council. The issue is, are we gonna build the park that they want us to build, on the timeline that they want us to build it." The City maintained it never made any representations the park would be built "by a certain time" and always said it would not be built "before a road gets built."

For its part, Hidden Glen defended the court's orally announced tentative decision.

Three weeks later, on December 5, 2013, the court issued a statement of decision that tracked its tentative decision and the proposed statement submitted by Hidden Glen, *except* as to the third hurdle. In discussing that hurdle, the court reiterated what it had stated in its tentative ruling as to the access issue —that at the time of the park planning hearings in April and May 2008, the shared driveway agreement was in place and all parties (including the City) expected it to go forward. That agreement did not fall apart until later, in part because of the other property owner. The court therefore continued to find "there was nothing about the shared driveway issue that triggered any accrual of HGP's claim in April 2008."

However, as to the irrigated turf issue, the court, after reexamining the evidence, agreed with the City that it weighed in favor of a finding that after the park planning process in April and May 2008, Hidden Glen could not reasonably have relied on

assurances the City was going to install irrigated turf. "The weight of the evidence described above leads the Court to conclude that in April and May 2008 the City clearly and unequivocally informed the public and HGP through Mr. Moore that the park area earlier planned for subsurface irrigated turf would be planted with unirrigated native grasses." The court further found that thereafter, "the City engaged in no conduct on which HGP could rely, reasonably or unreasonably, in forbearing to file a lawsuit within one year of April, 2008."

The court then discussed whether Hidden Glen had "proceeded diligently to file suit." Noting the applicable period was one year and Hidden Glen had filed its claim in January 2010, the court observed "the actual facts concerning the turf and irrigation were known or should have been known no later than April 2008" (or stated another way, the court found the City equitably stopped only through April 2008). The court then commented again on the driveway/access issue, stating, "Although Mr. Freitas notified HGP for the first time in March 2009 that the park wouldn't get built without the shared driveway, which was an additional change in the City's position, the one-year statute of limitations had already begun to run in April 2008."

Judgment on the Pleadings

Four weeks after the court issued its statement of decision, the City, on January 17, 2014, moved for judgment on the pleadings, largely on the ground the trial court's equitable estoppel findings establish that Hidden Glen's contract claims are barred by the one-year claims presentation period. The City asserted "it has always been clear from the face of HGP's pleadings" that Hidden Glen failed to file a government claim within one year of "discovering the City's alleged breach." The trial court, in turn, according to the City, found "that the City is not equitably estopped from asserting the statute of limitations, that HGP's breach of contract cause of action accrued in January 2006, and that HGP did not 'proceed diligently to file suit' after the estoppel period ended." The City claimed these findings, which the City asked the court to judicially notice, foreclosed any jury trial on the contract claims.

In its motion, the City referred to a trial management conference at which Hidden Glen assertedly "suggested" it "was still entitled to a jury trial on its breach of contract claims because the accrual date of the breach of contract claims was still an 'open question.' " The City maintained this was not so, and Hidden Glen was, in any case, judicially estopped from advocating that its claims accrued any time other than when the trial court "found" its claims accrued, i.e., in January 2006.

In opposition, Hidden Glen maintained "[t]he issue of precisely when HGP's claims accrued . . . and when and whether the City breached" the park-related agreements "were not resolved or finally determined by the Court." "Factual issues as to the terms of the contract, the date of breach, if any, accrual and damages are likewise for the jury." "Indeed, the question of whether the City did anything in April or May 2008 time period amounting to a clear repudiation of the City's dual obligations to (1) build a park (2) with an irrigated turf field, is also an issue for a jury to decide." Hidden Glen then turned its attention to the City's request for judicial notice, which it claimed was an improper attempt to have the court notice the truth of the evidence adduced at the equitable estoppel trial. As for the City's assertion that Hidden Glen was judicially estopped as to the date of accrual of its claims, Hidden Glen maintained all the elements of that doctrine were not met, and there were "issues remaining to be tried concerning contract breach and materiality in the April–May 2008 time frame." Hidden Glen asked for leave to amend at the very least.

In reply, the City disputed Hidden Glen's assertion that the trial court had made no finding on accrual. According to the City, "[t]he Court first had to determine when HGP's claims accrued, because equitable estoppel only becomes relevant once a claim is accrued." "HGP's claim that the accrual date is not 'nailed down,' but open for interpretation by a jury, would give HGP an unwarranted second chance to try this case again." The City also continued to insist Hidden Glen was judicially estopped from disputing a January 2006 accrual date. The City claimed that to fend off its demurrer, Hidden Glen had "alleged that the City was required to build a park by February 2006"

and that Hidden Glen had "reaffirmed that position through its testimony at trial and persuaded th[e] Court that its Contract Claims did, in fact, accrue in February 2006."

At the February 19, 2014 hearing on the City's motion, Hidden Glen emphasized two points. First, the trial court had not tried the contract issues and therefore, it could not have decided whether there was a breach and when any breach of contract claim, in fact, accrued and when the one-year time period, in fact, commenced running. All the court found in its final statement of decision was there "probably was an accrual" in January 2006 for limitations purposes. As for the evidence presented at the bifurcated trial, Hidden Glen maintained the City took differing positions. On the one hand, the City repeatedly asserted any breach occurred by 2002 (eight months after the settlement agreement); on the other, its witnesses testified the City did not think there was any specific time obligation for performance and it ultimately took the position it could not perform until there was additional access. Thus, the time of performance was a contract issue the jury was going to have to decide. Second, Hidden Glen pointed out it "pled irrigated turf and contract. The City always said, including April of 2008, and May of 2008, [w]e are going to put in the park. We are not breaching the contract. We are not telling you we're not going to put in the park. That didn't happen until 2009." Its pleadings, said Hidden Glen, alleged "irrigated turf 'or' the park. We don't just say 'irrigated turf.' We say 'or the park,' in the alternative." Hidden Glen therefore claimed it had pled a viable claim, even under the trial court's statement of decision, and "at a minimum" it was entitled, in connection with a motion for judgment on the pleadings, to amend.

The City maintained the equitable estoppel trial was premised on there having been a breach and the claims filing period having run, and it fumed that Hidden Glen was "articulating an entirely different theory of the case." "They have alleged from day one that the City failed to install an irrigated playing field turf park in a timely fashion." The City claimed Hidden Glen's complaint alleged that breach occurred in 2002 (eight months after execution of the settlement agreement), and at trial it had managed to convince the court breach occurred in 2006. "They have resurrected their complaint on

multiple occasions by weaving and claiming new theories. It is time for these claims to be dismissed."

A month after the hearing, on March 18, 2014, the trial court issued an order granting the City's motion for judgment on the pleadings. As requested by the City, the court took judicial notice of its prior "factual determinations." The court stated it had "determined the following: (1) Hidden Glen's contract causes of action accrued in January 2006; (2) City was equitably estopped from asserting a statute of limitations defense between January 2006 and April 2008; (3) The estoppel period ended and the statute of limitations commenced running in April 2008; and (4) Hidden Glen did not proceed diligently to file suit once it discovered the actual facts."

The court described Hidden Glen's arguments that a jury had to decide the issue of accrual as "meritless." "The court has already tried and decided that issue." Acknowledging that in its statement of decision the court had said the alleged breach " 'occurred *probably*' " in 2006, the court now stated it "necessarily found" the "alleged breach, if any, occurred in fact in 2006" because "equitable estoppel only becomes relevant once a claim is accrued." In addition, the court stated the "parties acceded to that approach at trial, and the trial was conducted on that understanding."

As for Hidden Glen's argument that its allegations encompassed an obligation to provide *a* park, as well as an obligation to install irrigated turf, the court ruled Hidden Glen was "estopped" to advance such a claim or had "waived" it by not raising it at the equitable estoppel trial. The court called this argument "not briefed" and lacking in merit. It similarly rejected Hidden Glen's argument that a jury should pass on whether the obligation to install irrigated turf was a "material" obligation. "[A]s demonstrated by the court's statement of decision, the failure to install an irrigated turf field is one of the complaint's material allegations and was a primary focus of the lengthy trial." The court rejected Hidden Glen's request for leave to amend on two grounds—there was no reasonable possibility Hidden Glen could allege new or additional facts supporting a timely claim and its request was "made in such an untimely manner" (i.e., after the equitable estoppel trial).

DISCUSSION

Breach of Contract Claims Regarding the Park

Standard of Review

"In an appeal from a motion granting judgment on the pleadings, we accept as true the facts alleged in the complaint and review the legal issues de novo. 'A motion for judgment on the pleadings, like a general demurrer, tests the allegations of the complaint or cross-complaint, supplemented by any matter of which the trial court takes judicial notice, to determine whether plaintiff or cross-complainant has stated a cause of action. [Citation.] Because the trial court's determination is made as a matter of law, we review the ruling de novo, assuming the truth of all material facts properly pled.' " (*Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 166; see *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 602.)

Where, as here, an equitable bench trial precedes a possible jury trial, "the first fact finder may bind the second when determining factual issues common" to both phases of trial; in fact, the court may make findings that obviate the need for further proceedings before a jury. (*Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156–157.) It is therefore not uncommon for a statement of decision following trial on equitable issues to govern on some issues in further proceedings, at least to the extent the litigants actually had the opportunity to contest those issues and they were necessary to support the equitable ruling. (See *In re Marriage of Starr* (2010) 189 Cal.App.4th 277, 288–289; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882; *Arntz Contracting Co. v. St. Paul Fire & Marine Ins. Co.* (1996) 47 Cal.App.4th 464, 487–488; *Canadian Indem. Co. v. Motors Ins. Corp.* (1964) 224 Cal.App.2d 8, 18–19; cf. *Columbia Casualty Co. v. Northwestern Nat. Ins. Co.* (1991) 231 Cal.App.3d 457, 473.)

That a court relies on an earlier statement of decision in rendering judgment does not, of course, insulate the statement from challenge on appeal. We review findings contained in such a statement under the substantial evidence standard. (See *Blix Street Records, Inc. v. Cassidy* (2010) 191 Cal.App.4th 39, 46–47 [substantial evidence review

of fact findings in statement of decision that underpin legal ruling of judicial estoppel]; *Citizens Business Bank v. Gevorgian* (2013) 218 Cal.App.4th 602, 613.)

Breach/Accrual Date

One of the principal difficulties in sorting out this case is the fact the issue of equitable estoppel was tried first, before any finding as to whether there was a contract, and, if so, what its terms were, whether there was a material breach thereof, and whether there were resulting damages such that a cause of action for breach of contract accrued. Rather, at the outset of the equitable estoppel trial, all of this was assumed. In fact, even the City told the trial court none of these contract elements was at issue and would not be decided by the court. But as the bifurcated trial progressed, both the parties and the court struggled with the vagaries of this hypothetical scenario. The situation worsened as it became clear the evidence pertaining to equitable estoppel was, indeed, much the same as that which pertained to the fundamental contract issues (contrary to what the City had told the trial court, and exactly as Hidden Glen had predicted).

Another difficulty is the confounding use by the parties (and, as a result, also by the trial court) of the terms "breach" and "accrual." Sometimes these terms were used interchangeably, despite the fact they have different legal meanings (although often breach and accrual do occur simultaneously). (See *Ram's Gate Winery, LLC v. Roche* (2015) 235 Cal.App.4th 1071, 1084.) Other times the parties and the court talked about a "breach" occurring or a contract claim "accruing," rather than a period of equitable estoppel commencing or ending.

As a result, the record is, for lack of a better descriptor, analytically tangled. For better clarity, we first address the date of any alleged breach and accrual of any contract claims.

We start with the allegations of Hidden Glen's operative complaint, as we must, given that the City moved for judgment on the pleadings. Hidden Glen alleged it satisfied all of its contractual obligations that were prerequisites to the City's alleged obligations. Namely, Hidden Glen conveyed " 'Parcel A,' " designated for the park, to the City in 2002. When problems arose in connection with the closure plan, Hidden Glen

and the City executed the SIA, and Hidden Glen allegedly "worked diligently and cooperatively with the City to install the water main and power services with the expectation that, once done, the City would complete the installation of the irrigated turf playing field and construction of the park." "On July 22, 2005, the City advised [Hidden Glen] to install 'a minimum of a 1.5 [inch]' water line service to irrigate the park." "By February 2006, [Hidden Glen] had completed the subdivision improvements, including providing irrigation water and power services to the City Property. The City acknowledged this fact in a Warranty/Maintenance Agreement executed . . . on February 8, 2006. With the water and power services now available, it appeared that the City would be able to proceed with installing the irrigated playing field turf as promised."

In short, Hidden Glen alleged the City should have commenced performance under the park-related agreements "by February 2006" and further alleged there was no performance then (or ever).

Even if Hidden Glen had not alleged a specific time frame for performance, the Civil Code would have filled the gap. When contracts, such as the park-related agreements, do not, themselves, specify a precise time "for the performance of an act required to be performed, a reasonable time is allowed." (Civ. Code, § 1657; see *Patel v. Liebermensch* (2008) 45 Cal.4th 344, 351.) Failure to perform within a reasonable time constitutes breach. (*Stark v. Shaw* (1957) 155 Cal.App.2d 171, 177 ["Defendant's unexcused failure to commence construction within the required time would constitute a breach of contract, which excuses the other party and permits him to recover for any loss occasioned by the breach."].)

" '[W]hat constitutes a reasonable time is a question of fact, depending upon the situation of the parties, the nature of the transaction, and the facts of the particular case.' " (*Wagner Construction Co. v. Pacific Mechanical Corp.* (2007) 41 Cal.4th 19, 30.) However, when "the essential facts are undisputed and only one reasonable inference may be drawn therefrom, the issue of unreasonable delay . . . is a question of law for this court." (*Allstate Ins. Co. v. Gonzalez* (1995) 38 Cal.App.4th 783, 790; see *Alexander v. Exxon Mobil* (2013) 219 Cal.App.4th 1236, 1256.) This is because "[w]hat

is objectively reasonable is a question of law, not fact." (*People v. Carreon* (2016) 248 Cal.App.4th 866, 876; see also *Sterling v. Taylor* (2007) 40 Cal.4th 757, 771 ["Conflicts in the extrinsic evidence are for the trier of fact to resolve, but whether the evidence meets the standard of reasonable certainty [for purposes of creating a binding contract] is a question of law."]; *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239 [" 'whether a party's reliance was justified may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts' "]; *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1179 (*Daniels*) [reasonableness of reliance can be decided on demurrer]; *Fieldstone Co. v. Briggs Plumbing Products, Inc.* (1997) 54 Cal.App.4th 357, 370, 62 Cal.Rptr.2d 701 ["whether notice was reasonable must be determined from the particular circumstances and, where but one inference can be drawn from undisputed facts, the issue may be determined as a matter of law"]; *Conservatorship of Geiger* (1992) 3 Cal.App.4th 127, 133 [" 'what is "reasonable" on undisputed facts is a question of law' "].)

As we have recited, Hidden Glen, itself, invoked the rule embodied in Civil Code section 1657 during the course of the equitable estoppel trial in asserting the City was obligated to perform in early 2006—a reasonable period of time, said Hidden Glen, after it completed the water and electrical hookups it agreed to provide.

Accordingly, whether one looks at Hidden Glen's allegations, alone, or in the context of Civil Code section 1657, Hidden Glen's operative complaint was grounded on alleged breaches and accrual in early 2006.

Further, throughout nearly the entirety of the trial court proceedings, Hidden Glen maintained the City was obligated to perform by early 2006. For example, Hidden Glen opposed the City's in limine motion to bar it from presenting evidence that its contract claims "accru[ed]" "other than [in] February of 2002" on the ground it had long "maintained . . . the basis of its 2006 accrual date is the breach of the Settlement Agreement, Closure Plan and SIA," the latter of which did not even exist in February 2002. The trial court sided with Hidden Glen and denied the City's motion.

Hidden Glen then asserted in its trial brief, in harmony with the allegations of its operative complaint and its opposition to the City's motion in limine, "As the SIA was not executed until September 6, 2002, and completion of the water and power connections did not occur until later 2005 or early 2006, the City is effectively estopped from any argument of an accrual date prior to that time." During trial, Hidden Glen reasserted, both in written submissions and in oral argument, that the park should have been built within a "reasonable time" after its July 2005 completion of the water and power hookups—a time period Hidden Glen estimated as six months, or by early to mid-2006 at the latest. Hidden Glen's evidence was consistent with this position. Indeed, one of Hidden Glen's partners testified the City had a reasonable time after installation of utilities to build the park, which time expired in January 2006. He additionally testified that he told the City in mid-2006 that the park was "past due."

Now, on appeal, Hidden Glen maintains judgment *on the pleadings* was erroneous because its operative complaint can fairly be read as alleging a "breach of contract, if any, first occurred in March 2009." We do not see it that way.

Hidden Glen's allegations in its operative complaint, as well as the law applicable to contractual obligations without explicit deadlines, lead to only one conclusion—breach of any and all alleged park obligations occurred after a reasonable period of time following Hidden Glen's completion of the water and electrical hookups in the summer of 2005. And this is exactly what Hidden Glen told the trial court during the bifurcated trial, when it proffered an "accrual" date of early or mid-2006 and fended off the City's assertion any breach occurred in 2002.[5] In short, according to Hidden Glen's own allegations, the City was in complete and total breach of the park-related agreements by early or mid-2006, as it had not built any park at all, in any incarnation. Whatever the City may have told Hidden Glen about the park between 2006 and March 2009 that

[5] While Hidden Glen attempts to make much of the legal distinction between the date of "breach" and that of "accrual," it offers no explanation as to why they are different dates in this case. Hidden Glen certainly never pleaded different dates. Nor did it, during the bifurcated trial, argue or present any evidence of such.

caused it to refrain from filing suit pertains to equitable estoppel, *not* to whether the City was in breach of its alleged obligations in connection with the park.

Nor has Hidden Glen identified any new factual allegations it could make in support of a March 2009 breach or accrual date. Indeed, such an allegation would be inconsistent with its own evidence. As we have recounted, one of Hidden Glen's principals testified the City should have had the park built by early 2006. Having identified no factual basis for doing so, Hidden Glen cannot simply "allege" a breach did not occur until 2009. Such a conclusory assertion cannot circumvent the inevitable import of Hidden Glen's long-standing factual allegations and its own evidence—that having not built any park within a reasonable period of time following Hidden Glen's installation of the required utilities, the City was in *total* breach of any and all contractual obligations by early or mid-2006. (See *Daniels*, *supra*, 246 Cal.App.4th at p. 1162 ["The facts alleged in the pleading are deemed to be true, but contentions, deductions, and conclusions of law are not."].)

In its reply brief, Hidden Glen tries to explain its "position has always been that there is a continuing breach that culminated on March 5, 2009 when the City first notified Hidden Glen that the park would not be provided. Until then, Hidden Glen contends the City was estopped by its conduct from claiming that the statute of limitations began to run." These two sentences reflect the analytical mish-mash that afflicts this case—there is no such thing as a "continuing breach" running in tandem with equitable estoppel. The doctrine of equitable estoppel operates only *after* there is breach and accrual, and essentially tolls the running of the limitations period during the period of estoppel. Nor is there any basis to invoke the "continuing violation" or "continuing accrual" doctrines (which is presumably what Hidden Glen means in asserting a "continuing breach"). (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1197–1200.) According to Hidden Glen's allegations, the City completely and totally breached any and all of its obligations pertaining to the park when it failed to build any park at all by early 2006. This is not a scenario that comes within either the "continuing violation" or "continuing accrual" doctrines. (*Ibid.*)

Not only must Hidden Glen live with its own allegations as to the time frame of breach and accrual, but we also agree with the City that Hidden Glen is judicially estopped from now advancing a different time frame.

" ' "[J]udicial estoppel is an equitable doctrine aimed at preventing fraud on the courts." ' " (*Thomas v. Gordon* (2000) 85 Cal.App.4th 113, 118.) " ' "[T]he 'essential function and justification of judicial estoppel is to prevent the use of intentional self-contradiction as a means of obtaining unfair advantage in a forum provided for suitors seeking justice.' " ' " (*Ibid.*) In other words, the doctrine prevents litigants from "obscure[ing] the relevant issues and considerations behind a smokescreen of self-contradictions and opportunistic flip-flops." (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 558.) It applies when: "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.)

Here, Hidden Glen has taken two, inconsistent positions. It alleged and repeatedly advocated for a 2006 breach/accrual time frame, including in (a) its opposition to the City's motion in limine to prevent Hidden Glen from introducing evidence of that date, (b) its trial brief, and (c) its exchanges with the court during trial. Now, in connection with the judgment on the pleadings, it is advocating a different, inconsistent breach/accrual date, March 2009, and it is not doing so out of ignorance, fraud, or mistake. Accordingly, the first, second, fourth and fifth factors of judicial estoppel are satisfied.

Hidden Glen also successfully asserted the position it first took as to the time of breach/accrual. The trial court accepted Hidden Glen's position in denying the City's motion in limine to exclude evidence of a 2006 breach/accrual date. Moreover, the court found Hidden Glen made it over the first "hurdle" in the equitable estoppel analysis, which the City claimed was a 2002 breach date, because the court agreed with Hidden

Glen's view that the City was not obligated to put the park in until a reasonable period of time after Hidden Glen provided water and power, i.e., until early 2006. The court thereafter found the City was equitably estopped to assert the limitations period until at least the spring of 2008 (we address the court's estoppel analysis later in this opinion).

For the third judicial estoppel factor, "[a] party need not finally prevail on the merits in the first proceeding. Rather, judicial acceptance means only that the first court has adopted the position urged by the party, either as a preliminary matter or as part of a final disposition." (*Edwards v. Aetna Life Ins. Co.* (6th Cir. 1982) 690 F.2d 595, 599, fn. 5; *Allen v. C & H Distributors, L.L.C.* (5th Cir. 2015) 813 F.3d 566, 573; *Vowers & Sons, Inc. v. Strasheim* (1998) 254 Neb. 506, 514.) As we have discussed, the trial court accepted Hidden Glen's first advocated breach/accrual date. While selecting a breach/accrual date may not have been essential to determining whether equitable estoppel applied during a given period of time (see *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383–384 [Equitable estoppel " ' "is wholly independent of the limitations period itself and takes its life . . . from the equitable principle that no man [may] profit from his own wrongdoing in a court of justice." ' "]), nonetheless, selecting the 2006 time frame advanced Hidden Glen's litigation objectives. Furthermore, when the trial court asked during the midst of trial, "Isn't one issue in connection with the estoppel when the breach occurred, and then when did the statute of limitations start running," Hidden Glen did *not* take issue with the court's apparent analytical premise. Rather, it focused on the evidence and argued against the City's proffered 2002 breach/accrual date, asserting the statute of limitations "starts running . . . six months after [the July 2005]" installation of utilities.

We therefore conclude Hidden Glen is bound by its alleged and advocated 2006 breach/accrual time frame and it cannot challenge the judgment on the pleadings on the ground its complaint can reasonably be read as asserting a March 2009 breach date.[6]

[6] Our conclusion as to accrual—based on Hidden Glen's own advocated position—is not an endorsement of the trial court's reasoning that accrual was necessarily part and parcel of the equitable estoppel analysis because estoppel does not become

Equitable Estoppel

Having explained why the case is properly grounded on a 2006 breach/accrual time frame, we turn to the trial court's equitable estoppel decision, which the City invoked as the basis for its motion for judgment on the pleadings.

As we have recited, in its tentative decision, the trial court announced a ruling that the City was estopped from asserting the limitations period through March 2009, the date of the City's e-mail making it clear no park, in any iteration, was going to be built unless Hidden Glen provided additional access for construction.

Following objections by the City, the trial court, in its written statement of decision, concluded the City was estopped only through April 2008. This determination was based on a finding that Hidden Glen could not, after the park planning and approval process during April and May 2008, reasonably rely on assurances by the City that it was going to install irrigated turf. Rather, it was apparent at that time that the City was going to plant native, minimally watered landscaping. The court also again found, however, as it had announced in its tentative decision, that it was not until March 2009, that the City took the position no park at all was going to be built unless Hidden Glen constructed additional construction access. But that reversal of position by the City, said the court, was of no consequence to the one-year period because by that time Hidden Glen was, or should have been, aware that the park was not going to have irrigated turf.

On appeal, Hidden Glen challenges the trial court's finding that after the park planning process in April and May 2008, Hidden Glen no longer could reasonably rely on assurances by the City that it was going to install irrigated turf. However, substantial evidence supports this finding. For example, the agenda summaries stated "[e]arlier design concepts considered an irrigated turf area but due to the limitations and potential

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relevant unless a claim has accrued and a time period has started running. The same could as easily be said as to the existence, terms and breach of a contract—without any of these elements, as well as accrual of any breach of contract claim, equitable estoppel is immaterial. However, the trial court clearly understood these other contract issues were not at issue and were not going to be decided during the bifurcated trial.

issues with the cap it was decided not to install irrigation." The city council, in turn, approved the native grass design described by the summaries. Ultimately, the trial court did not credit Hidden Glen's assertion that, given references during the planning process to hose watering, it reasonably continued to believe there would be some form of irrigated turf. Accordingly, there is nothing amiss with respect to the court's ruling that, at least as to the City's failure to install irrigated turf, equitable estoppel ceased being a bar to the running of the claims filing period by April/May of 2008.

Hidden Glen's principal assertion on appeal is that, even if its contract claims based on the City's failure to install irrigated turf are time-barred, at the very least it should have been given leave to amend to pursue claims based on the City's refusal to provide *any* park, in any form, unless Hidden Glen provides additional construction access. Hidden Glen maintains that the allegations of its government claim and its operative complaint are sufficiently broad to include such claims.

The trial court's tentative decision and statement of decision, themselves, distinguished between a park without turf (which the court ultimately found became apparent in April 2008) and no park at all without additional construction access (which the court consistently found did not become apparent until nearly one year later, in March 2009). Whether these issues should have been viewed as separable contract claims and, if so, whether separate equitable estoppel analyses should have been made, were questions that never arose in connection with the court's tentative decision, since the court, at that point, concluded March 2009 was the pivotal date and the City was estopped for a sufficient period of time to make even the turf-related claim timely. These questions do, however, arise in connection with the court's statement of decision, given the court's continued distinction between the turf issue and the access issue, and its conclusion that the City is estopped only through April 2008, a time frame the court found applicable only to the turf issue.

During the judgment on the pleadings proceedings, the City strenuously opposed Hidden Glen's efforts to convince the trial court to view the no-turf and the no-park-at-all situations as separable contract claims, asserting Hidden Glen had waived or was

judicially estopped to assert any claims based on the City's eventual refusal to build any park at all without additional construction access. The trial court appears to have agreed with the City, ruling Hidden Glen was "estopped" to advance any such claims or had "waived" them by not raising them at the equitable estoppel trial.

In our view, the no-park-at-all claims Hidden Glen seeks to separately pursue have been within the ambit of this case from its outset. For example, when Hidden Glen opposed the City's first demurrer, it asserted the City failed "to recognize . . . its duty to install the irrigated turf playing field *and public park*." (Italics added.) In its second amended complaint, Hidden Glen alleged the City had shirked its "obligations to install turf and cap the playing field turf *or complete the park*." (Italics added.) When the City sought summary adjudication, it argued "Hidden Glen . . . asserts that the City was obligated . . . to: (1) install irrigated playing field turf; and (2) construct a public park." Hidden Glen did not dispute this summary of its claims. In its trial brief filed before the bifurcated trial on equitable estoppel, Hidden Glen complained about "the City's failure to install an irrigated turf field *and public park*." (Italics added.) In its closing argument during the trial, Hidden Glen focused on these two alleged shortcomings—failure to install turf *and* failure to build the park without additional construction access. The City, in turn, in its closing argument, stated Hidden Glen was asserting (1) by building the park "without irrigated turf the City is in breach" and (2) that "conditioning the park on construction of th[e] access road is a breach of the Settlement Agreement."

We see no basis for waiver based on Hidden Glen's actions vis-à-vis the court's tentative ruling, as it was entirely in Hidden Glen's favor. Thus, Hidden Glen's failure to challenge any aspect of the court's reasoning therein, its preparation of a proposed statement of decision tracking the court's tentative decision, and its defense of the court's tentative decision in the face of the City's objections, cannot be viewed as forfeiting any objections to the court's subsequent, and adverse, analysis in its statement of decision.

Thus, whether Hidden Glen can be said to have waived such claims, seems to us, to come down to whether it was required to immediately challenge the court's statement of decision on the ground the court should have viewed the City's failure to provide

irrigated turf and its refusal to build any park at all absent additional construction access as separable breach of contract claims that required separate equitable estoppel analyses.

If Hidden Glen were taking the position the trial court's findings were ambiguous, or the court simply failed to make findings to support its decision, it would have been required to challenge the statement of decision under Code of Civil Procedure section 634. (See *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1138, fn. 6 [if party fails to bring omissions or ambiguities in a trial court's factual findings to the attention of the court, "that party waives the right to claim on appeal that the statement was deficient in these regards" and the appellate court will infer the trial court made implied factual findings to support the judgment].) However, a party need not make an objection under section 634 to preserve challenges to legal errors appearing on the face of a statement of decision.[7] (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 59; *United Services Auto. Assn. v. Dalrymple* (1991) 232 Cal.App.3d 182, 186.)

We therefore turn to whether the trial court should have viewed the City's failure to provide irrigated turf and its subsequent refusal to build any park at all absent additional construction access as separable breach of contract claims subject to separate equitable estoppel analyses, and on that basis, should have denied, in part, the City's motion for judgment on the pleadings.

That a contract can have separable obligations which can be separately breached is well established. "Contracts sometimes provide for more than one performance by a promisor. In such cases, it seems the nonperformance of each thing promised is a separate breach of contract rendering the promisor liable, and an action upon a breach of one promise will not necessarily involve an inability to sue subsequently on later breaches of the same contract for the causes of action [that] are different." (23 Williston, Contracts (4th ed. 2002) § 63:13, p. 477, cited in *Mulborn v. Montezuma Improvement Co.* (1924) 69 Cal.App. 621, 626–627.) Furthermore, "there is much authority for the

[7] Nor was Hidden Glen required to file a motion for a new trial under Code of Civil Procedure section 659. (See *Garcia v. ConMed Corp.* (2012) 204 Cal.App.4th 144, 148 ["generally, motion for a new trial not necessary to preserve an issue for appeal"].)

statement that where separate actions would lie for a series of such breaches, the statute [of limitations] operates against each one separately as of the time when each one could have been brought." (10 Corbin, Contracts (2014) § 53.9, p. 59; cf. *Nakash v. Superior Court* (1987) 196 Cal.App.3d 59, 69 [second suit on same contract, but different alleged wrongdoing, not barred by res judicata].)

There does not appear to be any question here that the City's alleged obligation to install irrigated turf is readily separable from the more fundamental alleged obligation to build *a* park. Both Hidden Glen and the City variously referred (although inaccurately) to the City's failure to install irrigated turf as a "breach" of its alleged contractual obligations and to the City's subsequent refusal to build any park at all absent additional construction access as another "breach" of its alleged obligations.[8] The trial court likewise readily discerned a distinction between these two obligations as reflected by its separate findings as to the April/May 2008 time frame, which pertained solely to the irrigated turf issue, and the March 2009 time frame, which pertained solely to the no-park-without-additional-construction-access issue.

Given that the irrigated turf issue and the no-park-at-all-absent-additional-access issue are separable, the question then becomes whether there should have been separate equitable analyses. Neither party has cited, nor are we aware of, any equitable estoppel case involving a situation like this one, where the defendant allegedly has breached separable contract obligations and engaged in different conduct with respect to those separable obligations, on which the plaintiff relied to refrain from pursuing a legal claim.

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[8] As we have discussed, Hidden Glen alleged and advocated that the City was in total and complete breach of *all* of its alleged obligations under the park-related agreements by early 2006 (i.e., approximately six months after Hidden Glen supplied water and electrical hookups) and Hidden Glen is bound to that breach/accrual time frame. The City's refusal to install irrigated turf and, later, to build any park at all absent additional construction access, were actions contrary to what the City had been telling Hidden Glen for years. Accordingly, these actions were not "breaches," but rather marked the points at which Hidden Glen could no longer reasonably rely on the City's past assurances, first about irrigated turf, and then, about a park *in simpliciter*.

While an event that breaches a contractual obligation is, of course, different from an event that terminates an equitable estoppel period, it seems to us there must be congruence between the law recognizing separable contract obligations and the law of equitable estoppel to assert a limitations defense. Indeed, it is entirely possible that a breaching party might be able to raise a limitations defense as to an alleged breach of one separable obligation, but be equitably estopped to assert a limitations defense as to an alleged breach of a different obligation. What occurred here is a case in point.

Equitable estoppel strives to accomplish equity where the allegedly breaching party has engaged in conduct leading the other party to refrain from pursuing its legal remedies. (See *Leasequip, Inc. v. Dapeer* (2002) 103 Cal.App.4th 394, 403.) We do not see the equity in a result that extricates an allegedly breaching party (who has lulled the other party into inaction) from answering for the breach of a separable contractual obligation simply because he happened to take action in connection with a different obligation that allows him to raise a limitations defense as to that obligation.

We therefore conclude the trial court's finding that after the park planning proceedings in April and May 2008 Hidden Glen could no longer reasonably rely on the City's assurances about irrigated turf, was not wholly dispositive as to the City's ability to assert the government claims limitation period. The trial court erred in not treating the irrigated turf issue and the no-park-at-all-unless-construction-access issue as involving separable alleged contractual obligations, with the claims thereon subject to separate equitable estoppel periods.

We further conclude that under the correct legal template, the trial court's findings—made once in its tentative decision and again in its statement of decision—resolve the equitable estoppel issue as to Hidden Glen's claims based on the City's refusal to build any park at all without additional construction access. In its tentative decision, the court rejected the City's 2002 accrual time frame, accepted Hidden Glen's alleged 2006 time frame and found the City equitably estopped to assert the limitations period from 2006 through March 2009, the date of the City's e-mail telling Hidden Glen it was not going to build a park at all unless Hidden Glen provided additional access for

construction, a position the court found was "contrary" to what the City had been telling Hidden Glen for years. The *only* material change the court made in its statement of decision was to find that, after the planning process in April and May 2008, Hidden Glen could no longer reasonably rely on the assurances the City had made about irrigated turf, as it was apparent at that point that the City intended to plant native grasses and plants requiring minimal watering. The court did not alter any of its other findings, including those pertaining to the construction access issue and the City's March 2009 e-mail. Rather, the court simply concluded its finding as to the irrigated turf meant the City's conduct after that time was immaterial because "the one-year statute of limitations had already begun to run in April 2008." As we have explained, that conclusion was legal error. The court's factual findings and its equitable estoppel conclusion tied to the City's March 2009 e-mail remained entirely material to the breach of contract claims based on the City's refusal to build any park at all without additional construction access. Given those findings and that conclusion, Hidden Glen's contract claims based on the City's subsequent refusal to build any park at all absent additional construction access are not barred by the one-year claims filing period.

Pump Station Causes of Action

Hidden Glen's sixth and seventh causes of action concern a different set of facts and were dismissed before the equitable estoppel trial when the trial court sustained the City's demurer to these causes of action without leave to amend.

These causes of action arise from the following alleged scenario: In connection with the City's approval of the final map for Hidden Glen's residential development, the City required an easement to install a water pump station. The station, said the City, would be consistent with a particular exemplar station located in another development and would be of a "fairly modest size and appearance." Based on these representations, Hidden Glen granted the City an easement. Years later, in 2006, the City obtained internal approval for a substantially larger pump station. A 2007 letter informed Hidden Glen of the change and attached a proposed design.

Hidden Glen claims the City's initial representations were made for the sole purpose of inducing its grant of the easement, which it would have withheld had it known the pump station was actually going to be substantially larger.

In its sixth cause of action, labeled "Rescission/Reformation of Pump Station Easement Based on Misrepresentation and Fraud," Hidden Glen sought an order terminating the easement or reforming it to require the City to install the kind of pump station it promised. In its seventh cause of action, labeled "Declaratory Relief as to the Pump Station Easement," Hidden Glen sought a declaration of the parties' rights under the various documents creating the pump station easement.

The City demurred to both the sixth and seventh causes of action on the grounds "1) rescission and/or reformation is not an available remedy, 2) the statute of limitations bars Plaintiffs' cause of action, and 3) the matter is not ripe for adjudication."

Hidden Glen responded that its claims were based on fraud, not breach of oral contract, and so were within the three-year limitations period applicable to fraud claims. Hidden Glen also asserted its claims were ripe because there was a concrete dispute between the parties, and the City had clearly approved a larger pump station than originally represented, even if the design was not entirely "final." Finally, Hidden Glen asserted it had alleged a sufficiently specific oral contract for purposes of rescission or reformation.

The trial court ruled Hidden Glen had "not established that there exists a justiciable controversy concerning *the pump house*" (italics added) because Hidden Glen's allegations "do not establish that design plans have been approved by the City." There needed to be, said the court, some final action such that the next step was construction. The court further stated as to "the sixth cause of action for rescission," that the "demurrer is also sustained on the ground that, on its face, the claim is barred by the two year statute of limitations for rescission of oral contracts." Leave to amend was denied.

The consolidated final judgment, entered after the motion for judgment on the pleadings, included the demurrer rulings and stated (1) Hidden Glen's "First, Second,

Third, *and Sixth* Causes of Action against the City are dismissed as time barred under the applicable statute of limitations," and (2) Hidden Glen's "*Seventh* Cause of Action against the City is dismissed as unripe."

Despite what the judgment states, the trial court clearly ruled the "pump house" claims, i.e., *both* the sixth and seventh causes of action, are unripe. A ruling that a claim is unripe is a ruling the action is premature. The ruling "does not go to the merits" and a judgment based thereon "does not act as a bar to a subsequent suit when the cause of action accrues." (*Kroff v. Larson* (1985) 167 Cal.App.3d 857, 861.) Moreover, because an unripe action has not accrued, there can be no running of the statute of limitations. (*Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1388 ["As a general rule, a cause of action accrues and a statute of limitations begins to run when a controversy is ripe . . . ."]; *Leonard v. John Crane, Inc.* (2012) 206 Cal.App.4th 1274, 1288; accord *Nebraska Health Care Ass'n. v. Dunning* (8th Cir. 1985) 778 F.2d 1291, 1295, fn. 5.)

On appeal, no one has assailed the trial court's ripeness determination as to both the sixth and seventh causes of action. Such a ruling, as we have just discussed, is incompatible with a conclusion the statute of limitations has run. Accordingly, to the extent the order sustaining the City's demurrer to the sixth cause of action states it is time-barred, that ruling cannot be legally reconciled with the court's ruling that the "pump house" claims are not ripe. The judgment is therefore also reversed as to the sixth and seventh causes of action, with directions to enter a dismissal of these two causes of action without prejudice. (See *Kroff v. Larson*, *supra*, 167 Cal.App.3d at p. 861.)

Costs and Attorney Fees

Given our reversal, in part, of the judgment, we must also reverse the trial court's related order awarding the City approximately $124,000 in costs and $745,000 in contractual attorney fees (an amount we note that is more than three times the original estimated cost of building the park).

Separately, Hidden Glen asserts it is presently entitled to an award of costs under Code of Civil Procedure section 1032 as the prevailing party on the City's heretofore

unmentioned cross-complaint. The City had alleged Hidden Glen breached the Shared Driveway Agreement, but ultimately dismissed its cross-claim. The trial court then denied Hidden Glen's request that it be deemed the "prevailing party" as to the cross-complaint.

For the award of mandatory costs under Code of Civil Procedure section 1032, "there is a single prevailing party." (*Sharif v. Mehusa, Inc.* (2015) 241 Cal.App.4th 185, 194.) That there is a cross-complaint alleging different claims than alleged in the complaint is immaterial, and does not give rise to a situation where there can be a prevailing party on the complaint, but a different prevailing party on the cross-complaint. (See *Michell v. Olick* (1996) 49 Cal.App.4th 1194, 1198.) The trial court may reassess and determine the "prevailing party" for cost purposes at the conclusion of the litigation. (*Ibid.*)

DISPOSITION

The judgment is reversed, in part, as described above, as to the first, second, and third causes of action (the contract claims) and as to the sixth and seventh causes of action (the pump station claims). The related orders awarding costs and fees to the City and denying Hidden Glen prevailing party status on the cross-complaint, are reversed in their entirety. The case is remanded for further proceedings in accordance with this opinion, namely a jury trial on Hidden Glen's breach of contract claims based on the City's refusal to build any park at all without additional access for construction. Each party to bear its own costs on appeal.

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Banke, J.

We concur:

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Humes, P.J.

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Dondero, J.